IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.2.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A) No.141 of 2007

M/s. Sundaram Finance Limited
21, Patullos Road,Chennai 600 002. .. Appellant
(Cause title accepted vide order
dated 23.1.2007 made in M.P.No.1
of 2007 in TC SR No.435 of 2007.)

Vs.

The Assistant Commissioner of Income Tax
Company Circle VI(4)
Chennai 600 034. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench dated 28.8.2006 in ITA No.1776/Mds/2002 for the assessment year 1996-97 against the Order of Commissioner of Income Tax [Appeals] V, Chennai 600 034 in ITA.No.69/2002-2003 dt. 28.8.2002 and against the order dated 28.3.2002 in GIR No/PAN 50-047/AAB FS 2605 N of the Asst. Commissioner of Income Tax, Company Circle VI [4], Chennai 6.

For Appellant : Mr.R.Vijayaraghavan
For M/s. Subbaraya Aiyar

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.1776/Mds/2002 dated 28.8.2006, raising the following substantial questions of law.

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the appellant is not entitled to deduction of the 'provision' made in respect of Non Performing Assets which are considered irrecoverable?

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(ii) Whether the Appellate Tribunal was justified in not appreciating that the provision made in respect of Non Performing Assets if not allowable as a bad debt is allowable as a business loss?

2. The assessee is the appellant. The assessee is engaged in the business of hire purchase financing, equipment leasing and allied activities. During the relevant assessment year, the assessee's claim with respect to the allowance for the provision of Non Performing Assets was rejected by the Assessing Officer on the ground that the same was already added back in the adjustment statement, following the earlier year's order, even though, according to the assessee, certain portion of the debts were not recoverable and provided for the same in the books of accounts, which represent the dimunition in value of the amount receivable and therefore, to be allowed as a business loss, if it was not allowed as a bad debt.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) contending that the provision has been made in accordance with the directions of the Reserve Bank of India on Non Performing Assets and on a case to case basis taking into account the overdue provision of the amount and therefore, provision is in the nature of assets and liability and has to be allowed as business loss. The Commissioner, taking note of the order of injunction granted by this Court restraining the respondents not to assess receivables as income where such amounts have not been recognised as income in the books of accounts by following the directions of the Reserve Bank of India, directed the Assessing Officer to give effect to the above said order.

4. The revenue, being infuriated by the said order, preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal, following the decision of this Court in T.N.Power Finance and Infrastructure Development Corporation Ltd. v. Joint Commissioner of Income Tax (280 ITR 491) and holding that the Commissioner was not justified in deleting the addition, restored the order of the Assessing Officer. Hence, the above appeal.

5. In T.N.Power Finance and Infrastructure Development Corporation Ltd. v. Joint Commissioner of Income Tax (280 ITR 491), this court held that merely because the Reserve Bank of India had given direction to the assessee to provide for non performing assets, the same could not override the mandatory provisions of the Act, as the provision for non-performing assets are of predominately capital in nature and accordingly, the assessee was not entitled to deduction.

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6. In view of the ratio laid down by this Court in the decision cited supra, we do not find any substantial question of law that arises for our consideration. Accordingly, the appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl

To
1. The Asst Registrar,
Income Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besant Nagar, Chennai.

2. The Commissioner of Income Taxable[Appeals] V,
121, Mahatma Gandhi Road,
Chennai 34.

3. The Assistant Commissioner of Income Tax,
Company Circle, VI[4], Chennai 6.

+ 1 CC To Mr.R.Vijayaraghavan, Advocate SR NO.11798

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